Federal Communications Commission
Washington, D.C.

February 2, 2000

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Re: Acceptance of Comments As Timely Filed in (Docket No. 96-98)

The Office of the Secretary has received your request for acceptance of your pleading in the above-referenced proceeding as timely filed due to operational problems with the Electronic Comment Filing System (ECFS). Pursuant to 47 C.F.R. Section 0.231(I), the Secretary has reviewed your request and verified your assertions. After considering arguments, the Secretary has determined that this pleading will be accepted as timely filed. If we can be of further assistance, please contact our office.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
for Magalie Roman Salas
Secretary

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
	)	

To: The Commission

MOTION TO ACCEPT FILING AS TIMELY FILED

e.spire Communications, Inc. ("e.spire") hereby respectfully requests that the Commission grant this Motion to Accept the Filing as Timely Filed in connection with e.spire's attempt to electronically file its initial comments in the above captioned proceeding.

1. On January 7, 2000 the Commission granted, in part, the motion of the United States Telecom Association for an extension of time to file initial comments and reply comments in the Commission's Fourth Further Notice and Proposed Rulemaking in the above captioned proceeding.[1] The Commission's Order established a deadline of January 19, 2000 for filing of initial comments and a deadline of February 18, 2000 for the filing of reply comments.

2. On January 19, 2000, between the hours of approximately 7:30 PM and 11:59 PM, e.spire attempted to file Comments in the above captioned proceeding via the Commission's Electronic

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[1] *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *Order Granting Extension of Time* (rel. Jan. 7, 2000) ("*Order*").

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Comment Filing System ("ECFS").[2] E.spire's numerous attempts to upload to the Commission's ECFS server both the ECFS "Cover Sheet" and e.spire's Comments, contained in a Microsoft Word 97 formatted file, were unsuccessful. Each attempt resulted either in the attempt to send the files "timing out" after approximately fifteen minutes, or in the receipt of a message indicating that ECFS filings could not be made in CC Docket 96-98. As a result, e.spire was unable to successfully file its initial comments via the Commission's ECFS system.

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2 The Commission indicated that parties could file comments electronically through the ECFS system. *See Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* FCC 99-238, ¶ 520 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

WHEREFORE, in the interest of building a complete record in this proceeding, e.spire respectfully requests that this Motion to Accept the Filing as Timely Filed be granted.[3] Pursuant to Sections 1.727(c) and 1.734(d) of the Commission's Rules, a proposed order for adoption is attached, and the order is being submitted on a hard disk. 47 C.F.R. §§ 1.727(c), 1.734(d).

Respectfully submitted,

e.spire Communications, Inc.

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January 20, 2000

[3] The Commission's ECFS web site (http://www.fcc.gov/e-file/ecfs.html) indicates that: "If the ECFS system is down for an extended period of time immediately prior to a deadline and users are unable to file electronically or via e-mail, the following action(s) should be taken: A 'Motion to Accept the Filing as Timely Filed' should accompany a paper filing. The Office of the Secretary should be contacted at (202) 418-0383."

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

PROPOSED ORDER

Adopted: **Released:**

By the Commission

1. e.spire Communications, Inc. ("e.spire") has filed a Motion to Accept the Filing as Timely Filed its initial comments in the Fourth Further Notice of Proposed Rulemaking in the above referenced proceeding, due to technical difficulties experienced by e.spire in uploading its comments to the Commission's Electronic Comment Filing System ("ECFS").

2. The Commission recognizes that technical problems may occasionally be experienced by the ECFS system. Further, it is in the Commission's interest to compile of full and complete record in this proceeding.

3. Accordingly, IT IS ORDERED that e.spire's Motion to Accept a Filing as Timely Filed IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
	)	

COMMENTS OF
E.SPIRE COMMUNICATIONS, INC.,

E.spire Communications, Inc. ("e.spire"), by its attorneys, hereby submits these comments on the Commission's *Fourth Further Notice of Proposed Rulemaking ("FNPRM")* in the above-captioned proceeding.[1]

I. INTRODUCTION

In its *FNPRM*, the Commission seeks comment on a number of issues regarding the provisioning of existing combinations of loop and transport to CLECs. This arrangement of unbundled network elements has been discussed widely in the instant proceeding, and is typically described as the extended link, also known as the enhanced extended link or "EEL." As currently used by CLECs in several states, extended links are comprised of a loop, central office aggregation/routing, and dedicated interoffice transport.

In some of these cases, extended links have been provisioned pursuant to arbitrated interconnection agreements (*e.g.*, e.spire/BellSouth (regional) and AT&T/Bell Atlantic

(New York)). In other cases, extended links have been made available as a part of ILEC's applications for interLATA relief under Section 271 of the Communications Act (*e.g.*, Bell Atlantic in New York and Southwestern Bell Telephone Company in Texas). In the *UNE Remand Order*, the Commission ordered ILECs to make the extended link generally available, pursuant to its Rule 315(b).[2]

In the *UNE Remand Order*, the Commission expressed concerns that, if large providers of interexchange voice traffic were able to convert existing Special Access services to extended links, ILECs may face a sudden and dramatic drop in access revenues. Apparently in response to this concern, the Commission issued an order amending the *UNE Remand Order*. In that order, the Commission imposed a restriction on the extended link, stating that "until resolution of our Fourth NPRM, which will occur on or before June 30, 2000, IXCs may not convert special access services to combinations of unbundled loops and transport elements . . .."[3]

In these comments, e.spire addresses several of the issues raised by the Commission in its *FNPRM*, and generally discuss provisions of the Communications Act that militate against imposition of use restrictions on extended links. E.spire does, however, note that the Commission may take specific and limited steps to prevent disruptive losses of ILEC access revenues in the short run, and propose several steps that would ensure this result, while making the extended loop available to providers of competitive local services.

(...continued)

1 *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking,* FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

2 *UNE Remand Order*, ¶¶ 475, n. 952; 476, 480.

3 *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Supplemental Order*, FCC 99-370, at ¶ 4 (rel. Nov. 24, 1999) ("*Supplemental Order*").

II. THE COMMISSION SHOULD REFRAIN FROM IMPOSING RESTRICTIONS ON UNE COMBINATIONS

In its *FNPRM*, the Commission noted that "it is not clear that the 1996 Act permits any restrictions to be placed on the use of unbundled network elements" but nevertheless sought comment on "whether there is any basis in the statute or our rules under which incumbent LECs could decline to provide combinations of loops and transport network elements at UNE prices, and whether the 'just and reasonable' terms of section 251(c) or 251(g) permit the Commission to establish a usage restriction on combinations of unbundled loops and transport network elements."[4]

The Communications Act does not allow for the imposition of permanent use restrictions on UNEs. This is reflected in § 153(46) of the Act, which defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used.*"[5] Indeed, the Commission has previously found that "the only limitation that the statute [Communications Act] imposes on the definition of a network element is that it must be 'used in the provision of a telecommunications service.'"[6] This policy is reflected in § 51.309(a) of the Commission's rules, which states that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in a manner that the requesting telecommunications carrier

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4 *Supplemental Order*, ¶ 6.

5 *See* 47 U.S.C. § 153(46) (emphasis added).

6 *Implementation of the Local Competition Provisions in Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd 15499 (1996) ¶ 261 ("*Local Competition Order*") (citations omitted).

intends."[7] In light of these unequivocal statements of the law, any permanent and/or mandatory restrictions imposed upon the use of extended links would constitute a violation of the Communications Act and the Commission's rules.

Moreover, compelling policy issues militate against adoption of a requirement that extended links be restricted, in whole or in part, to carriage of local traffic. In two recent orders, the Commission expressly found that dedicated and dial-up traffic terminating to Internet service providers is jurisdictionally interstate.[8] A local usage restriction would effectively prevent CLECs from provisioning ISP-bound traffic over extended links--an outcome that the Commission clearly does not intend. In fact, in the *Supplemental Order*, the Commission stated that the local usage restrictions it adopted do "not affect the ability of competitive LECs to use combinations of loops and transport . . . to provide local exchange service, exchange access service" or "advanced services."[9]

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7 47 C.F.R. § 51.309(a).

8 *See GTE Tel. Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No.* 1148, CC Docket 98-79, 13 FCC Rcd 22466 (rel. Oct. 30, 1998); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation For ISP-Bound Traffic*, CC Docket 96-98, 14 FCC Rcd 3689 (rel. Feb. 26, 1999).

9 *Supplemental Order*, ¶ 5.

III. TO PREVENT SUBSTANTIAL LOSS OF ILEC ACCESS REVENUES FROM THE CONVERSION OF SPECIAL ACCESS CIRCUITS, THE COMMISSION COULD IMPOSE NARROWLY TAILORED LIMITATIONS

The Commission must ensure that its rules are clear and unequivocal with respect to which service applications are affected by the proposed restrictions in order to prevent ILECs from gaming the system and imposing burdensome and unnecessary litigation costs upon CLECs. Restrictions that in any way restrict CLEC use of EELs for advanced services applications must be rejected by this Commission. However, to the extent that the Commission finds that some restrictions are necessary, on a temporary and interim basis in order to safeguard Universal Service and prevent disruptive rate shock in ILEC access revenues, e.spire could support such narrowly defined restrictions, for a finite duration.[10]

The Commission should narrowly tailor its EEL restriction rules to allow the conversion of Special Access circuits to UNEs if the circuits terminate at:

- Any data switch maintained by the requesting carrier (including Digital Subscriber Line Access Multiplexers, Frame Relay and Asynchronous Transfer Mode switches, Time Domain switches, Internet Protocol based switches, etc.);
- A requesting carrier's local switches (end office or tandem) or their equivalents; or
- The local switch side of partitioned local/long distance switches.

Again, the Commission should make absolutely clear which service applications are affected, and what policy goals are to be supported by these restrictions, to prevent the

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[10] E.spire agrees that in order to complete all of the steps toward the pro-competitive goals of the 1996 Act, including the full implementation of a competitively-neutral system to fund universal service and a transition to cost-based access charges, the Commission may (continued...)

restrictions from being improperly implemented, and to prevent unnecessary litigation. E.spire agrees that the temporary constraint upon the use of combined loop and transport UNEs in order to prevent a precipitous and disruptive reduction in ILEC access revenues, and to ensure proper funding of Universal Service programs is appropriate. However, e.spire submits that this goal can be realized in within twelve months, and therefore, the above described limitations on the use of unbundled loops and transport should sunset after one year.

IV. THE COMMISSION SHOULD REAFFIRM THAT UNDER SECTION 315(B) OF ITS RULES, ILECS ARE PREVENTED FROM BREAKING APART UNES THAT ARE OFFERED IN COMBINATION

While e.spire is able to support a temporary constraint on the use of combinations of UNEs, the Commission should specifically reaffirm that ILECs are foreclosed from breaking apart combinations of UNEs that are already combined in their network. Section 51.315(b) of the Commission's rules provides that "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines."[11]

As the Supreme Court made clear in its decision overturning the Eighth Circuit's *Iowa Utilities Board* decision, "[Section 251(c)(3)] assuredly contemplates that elements may be requested and provided in [discrete pieces] (which the Commission's rules do not prohibit). But it does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form."[12] In upholding this rule, the United States Supreme Court concluded that section 51.315(b) is "aimed at preventing ILECs from 'disconnect[ing] previously connected

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(...continued)
impose a "temporary constraint on the use of combinations of unbundled loops and transport elements to provide exchange access service." *Supplemental Order*, ¶ 7.

11 47 C.F.R. § 51.315(b).

elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants,'" and the Commission's rule is an "entirely rational" implementation of section 251(c)(3)'s nondiscrimination requirement.[13] Thus, there can be no serious question that under current federal rules implementing the Act, ILECs are obligated to provide competitors with UNE combinations, including the extended link, "that the incumbent currently combines" in its own network[14]

In order to avoid any ambiguity and avoid unnecessary litigation, the Commission should explicitly state that CLECs that have ordered Special Access circuits to terminate in their collocated or non-collocated data switches or Class 5 switches or equivalents may convert them to UNEs. In addition, the Commission should explicitly state that a carriers' right to convert Special Access circuits is applicable to both existing *and* any Special Access lines converted in to UNEs in the future. Further, the Commission should reiterate the conclusion it reached in the *UNE Remand Order* that such conversions should be available through the access service request

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(...continued)

12 *AT&T v. Iowa Utils. Bd.* 119 S. Ct. 721 (1999).

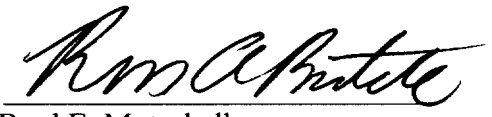
13 *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 737 (1999).

14 47 C.F.R § 51.315(b).

("ASR") process and should not incur significant delay.[15] Moreover, the Commission should expressly prohibit the establishment of any new or additional charges for such conversions.

Respectfully submitted,

E.SPIRE COMMUNICATIONS, INC.

By: 

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[15] In its *UNE Remand Order*, the Commission indicated that the ASR process, not the LSR process should be utilized in provisioning EEL arrangements. The Commission stated that "requesting carriers and incumbent LECs have developed routine provisioning processes to deploy the EEL using the ASR or Access Service Request process, and thus requesting carriers will not face material provisioning delays and costs to integrate the EEL into their networks." *See UNE Remand Order*, n. 581.

CERTIFICATE OF SERVICE

I hereby certify that an original and 9 copies of the foregoing were served on this 19th day of January, 2000 upon the following:

By hand

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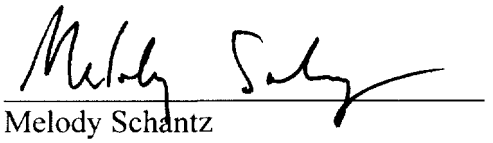

Melody Schantz